

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.344 OF 2006
IN
CRIMINAL APPEAL NO. OF 2006**

The State of Maharashtra ...Applicant

V/s.

Keshavrao Amarnath Dhawan ...
Respondent

Mr.Y.M. Nakhawa APP for the State.

Mr.M.S. Mohite for Respondent.

CORAM : V.M. KANADE, J.

DATED : 20th SEPTEMBER, 2007.

P.C:-

1. State has filed this application against acquittal, U/s.378 of Cr.P.C. and is seeking leave of this Court for filing criminal appeal. By judgment and order dated 10/10/2005, the Special Judge, Pune was pleased to acquit the Respondent/Accused for the offences punishable U/s.7, 13(I)(d) r/w 13(2) of Prevention of Corruption Act.

2. Prosecution case is that a complaint was lodged by one Tukaram Mate alleging that Respondent had demanded an amount of Rs. 5,000/- and that a complaint was lodged by the Complainant with Anti Corruption Bureau and pre-trapped panchanama was made and,

therefore, on the appointed date, Complainant approached the accused alongwith panch witness and paid amount which was demanded. At that time, raiding party seized said notes and prepared panchanama. Thereafter, statement of witnesses were recorded. Chargesheet was filed. The Trial Court after having gone through evidence on record, came to the conclusion that the prosecution has not established its case beyond reasonable doubt and, therefore, the Trial Court acquitted the Respondent/Accused.

3. Learned counsel for the Respondent has filed compilation of notes of evidence.

4. Learned counsel for the Applicant submitted that anthracene powder was found on the hands of the Accused. He further submitted that the Trial Court had erred in acquitting the Accused. He submitted that this is a fit case for grant of leave to file appeal.

5. Learned counsel for the Respondent/Accused, on the other hand, submitted that Accused had taken a specific defence that on earlier occasions several complaints were filed by the Complainant. In all

these cases, the Accused was exonerated. He invited my attention to the finding recorded by the lower Appellate Court and also to the evidence on record. He submitted that this was not a fit case for grant of leave to file an appeal.

6. It is quite a well settled position in law that in case where allegation of demand of illegal gratification is made, burden is cast on the prosecution to establish not only acceptance of money towards illegal gratification but it is duty of this Court first to see whether prosecution has established demand of bribe. It is also a well settled that demand of bribe is foundation on the basis of which prosecution has to establish further acceptance of illegal gratification and if the prosecution fails to establish the demand then in that case mere proof of acceptance of money will not be sufficient in convicting the Accused for the offence punishable under the Prevention of Corruption Act.

7. In the present case, it has come on record that Accused had purchased a flat from the Complainant Tukaram Mate in the year 1992 and it was noticed that Tukaram Mate had unauthorisedly constructed said flat. He alongwith others filed complaints to various authorities.

This complaint has been brought on record at Ex.24. Accordingly, notices were sent to Tukaram Mate and copy thereof given to the Accused which is at Ex.25. It is case of the Respondent that Tukaram Mate, therefore, started taking revenge and filed complaint against the Accused on 29/02/1996 alleging theft of electric motor switch against Accused. In the said case, the Accused was tried and he was acquitted by the Court. Copy of said judgment and order is on record at Ex.21. Thereafter, another complaint was lodged by the Complainant Tukaram Mate on 18/04/1996 against the Accused alleging manhandling and threatening by the Accused to the Complainant Tukaram Mate. In this case also, the Accused was acquitted and copy of said judgment and order is at Ex.22. Complainant Tukaram Mate, admittedly, was a Government Contractor and used to undertake contracts on behalf of CW and PRS. In respect of agreement No.1, 1999-2000 penalty of Rs.5460/- was imposed on the Tukaram Mate. Again in the year 1999-2000, penalty of Rs.2523/- was proposed as per rules and proposal was sent to Director for Approval. It is case of the Respondent that the Complainant Tukaram Mate was aware that the Accused was to go back to Research Division and, therefore, with the malafide intention, he

arranged the trap on 2/06/2000. On 2/6/2000 Accused went near his Scooter after handing over the charge to Shri. Pawar. Accused saw Tukaram Mate standing near his scooter and he suspected some foul play. He found that some notes were planted in the gap of his tray of scooter dickey and he was caught red handed. It is case of the Respondent that demand of bribe is not established. Demand or receipt of bribe was also not established. In the complaint, it was alleged that the money was demanded for two reasons, firstly for refund of security deposit and secondly for not imposing penalty on account of delayed completion of work. It has been brought on record that, in fact, Accused did not have authority to impose penalty as power was vested in the director and secondly, security deposits was already received by the Accused. Further in the evidence of panch witness and Complainant, it can be seen that the demand has not been established. The Trial Court has observed that the PW-2 panch was at the distance of about 30 to 33 fts. away from the Accused and Complainant Tukaram Mate and as such, he could not have heard what the Accused had said to the Complainant. Therefore, finding has been recorded that it is impossible for PW-2 to hear talk between the Complainant and the Accused. The

Trial Court has also taken into consideration the photograph Ex.32. Further, record reveals that there was no motive for demand of bribe. Ex.30 which is on record falsifies case of the Complainant regarding payment of money for refund of security deposits.

8. Thus, in my view, considering the evidence on record, no case is made out for grant of leave. Hence, leave is refused. Appeal does not survive.

. Criminal Application is dismissed and disposed of accordingly.

V.M. KANADE, J.